

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
In re: : Chapter 11
:
SEARS HOLDINGS CORPORATION, *et al.*,¹ :
:
Debtors. : Case No. 18-23538-rdd
:
: (Jointly Administered)
:
-----X

**APPELLANT ESL INVESTMENTS, INC.’S
STATEMENT OF ISSUES TO BE PRESENTED AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC (collectively, “ESL”)), by and through its undersigned counsel, hereby respectfully submits, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of New York, this statement of issues to be presented and designation of items to be included in the record on

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR-Rover De Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

appeal with respect to its appeal of this Court's *Order Determining the Amount of Second-Lien Holders' Section 507(B) Administrative Claims Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure* (ECF No. 4740) (the "Appealed Order")² before the United States District Court for the Southern District of New York (the "District Court") at Case No. 19-cv-7660 (VB).

STATEMENT OF ISSUES ON APPEAL

When Appellees Sears Holdings Corporation and its affiliates ("Sears") filed for bankruptcy on October 15, 2018 (the "Petition Date"), ESL and the other Appellants (the "Second Lien Holders") held perfected second liens on the Appellees' inventory and receivables securing approximately \$1.151 billion in debt, a substantial majority of which was owed by Sears to the Second Lien Holders. Under the Bankruptcy Code, 11 U.S.C. § 101, et seq., Sears could not continue to use that collateral without providing the Second Lien Holders "adequate protection" for their security interests. To that end, Sears and the Second Lien Holders entered into a stipulation, approved by the bankruptcy court, under which Sears was permitted to continue to sell and otherwise use the Second Lien Holders' collateral. In exchange, Sears provided the Second Lien Holders with "replacement liens" on other assets, including on any new inventory purchased or accounts' receivable generated by Sears during the bankruptcy. And, in the event those replacement liens proved to be inadequate to fully protect the value of the Second Lien Holders' collateral as of the Petition Date, the stipulated order granted the Second Lien Holders a super-priority claim, ahead of all other claims, for any such diminution in the value of the collateral, in accordance with Section 507(b) of the Bankruptcy Code. In the decision below, the bankruptcy court held that there had been no such diminution and that,

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Appealed Order.

accordingly, the Second Lien Holders were not entitled to any super-priority claim, even though Sears had months after it filed for bankruptcy sold whatever collateral remained for an amount that paid the Second Lien Holders only \$433.5 million, leaving them owed approximately \$718 million. The court reached that conclusion by (among other errors) valuing the collateral, in disregard of controlling Supreme Court precedent on the proper valuation methodology (replacement cost to the Debtor), under a potential, hypothetical liquidation as worth on the Petition Date some \$200 million less than even Sears claimed it had been worth (and as worth at least \$573 million less than the actual uncontested replacement value of the collateral) and by treating some \$395 million in entirely contingent obligations of the senior, first-lien lenders, in the form of undrawn letters of credit, as if they had been fully drawn when, in fact, virtually none of those letters of credit were ever drawn in the bankruptcy case.

ESL intends to present the following issues on appeal:

1. Did the bankruptcy court err in applying its own “real world” hypothetical liquidation test to compute the value of Appellants’ Collateral on the Petition Date, rather than following the Supreme Court’s ruling in *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 962 (1997), that replacement cost is the appropriate valuation methodology where, as here, the debtor did not surrender the collateral to the secured creditor but rather used and sold it to generate economic value for the debtor and its bankruptcy estate?
2. Did the bankruptcy court similarly err in deducting approximately \$395 million from the Second Lien Holders’ claims based on the assumption that, in a hypothetical liquidation, contingent unfunded first lien obligations pursuant to standby letters of credit would become funded when, in fact, no significant draws under these letters of credit occurred in the

case and they were assumed by the buyer without any funding as part of the going concern sale of Sears' business that actually occurred?

3. Did the bankruptcy court also err by failing to follow Second Circuit precedent in *Gen. Elec. Credit Corp. v. Levin & Weintraub (In re Flagstaff Foodservice Corp.)*, 739 F.2d 73 (2d Cir. 1984); *Gen. Elec. Credit Corp. v. Peltz (In re Flagstaff Foodservice Corp.)*, 762 F.2d 10 (2d Cir. 1985) and by deducting surcharges for indirect overhead costs and administrative expenses of the bankruptcy as part of its valuation process despite ruling that the Debtors had failed to meet their burden to impose any such surcharges under Section 506(c) of the Bankruptcy Code?

4. Did the bankruptcy court otherwise err, including by not crediting the Second Lien Holders' secured claim with the benefit of cash, pharmacy script collateral, "ineligible" inventory and in-transit inventory and by deducting from the value of such claim hypothetical interest expenses?

5. Did the bankruptcy court err in ruling that the plain text of the asset purchase agreement under which Sears sold its business operations in bankruptcy limits ESL's recovery on account of its claims under section 507(b) of the Bankruptcy Code to \$50 million?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL³

ESL designates the following items for inclusion in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and referenced within such items.

³ The list of items designated for inclusion in the record on appeal is the same as the list of items that has been designated by Cyrus Capital Partners, L.P. for inclusion in the record on appeal of the Appealed Order before the District Court at Case No. 19-cv-7782 (VB) and the list of items that has been designated by Wilmington Trust, National Association for inclusion in the record on appeal of the Appealed Order before the District Court at Case No. 19-cv-7697 (VB). All documents designated herein without a docket number reference were electronically filed by Cyrus Capital Partners, L.P. on August 28, 2019 at ECF No. 5017.

DOCUMENTS FILED IN BANKRUPTCY COURT

Docket No.	Docket Entry Date	Description
3198	4/15/2019	Declaration of Brian J. Griffith in Support of Debtors' Objection to Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors' Continued Use of Collateral, Including Cash Collateral, and Exhibits 1-2 thereto, annexed as Exhibit A to Debtors' Objection to Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit of Condition Debtors' Continued Use of Collateral, Including Cash Collateral
3205	4/15/2019	First Application of Alvarez and Marsal North America, LLC as Financial Advisors for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from October 15, 2018 through February 28, 2019
4034	5/26/2019	Debtors' Motion to Estimate Certain 507(b) Claims for Reserve Purposes
4035	5/26/2019	Declaration of Brian J. Griffith in Support of the Debtors' Motion to Estimate Certain 507(b) Claims for Reserve Purposes, with Exhibit A thereto
4272	6/18/2019	Common Memorandum of Law on Behalf of the Second Lien Parties: (A) In Support of Their Requests to Determine the Amount of Their Second Lien Secured Claims Under Section 506(a) and Their Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and (B) In Opposition to Debtors' Motion to Surcharge Their Collateral Pursuant to Section 506(c)
4273	6/18/2019	Supplemental Memorandum of Law on Behalf of ESL Investments, Inc. in Support of Its Requests to Determine the Amount of its Second Lien Secured Claims Under Section 506(a) and its Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and In Opposition to the Debtors' Motion to Surcharge its Collateral Pursuant to Section 506(c)
4275	6/18/2019	Declaration of Katherine R. Lynch on Behalf of ESL Investments, Inc. In Support of The Second Lien Parties' Requests to Determine the Amount of Their Second Lien Secured Claims Under Section 506(a) and Their Section 507(b)

Docket No.	Docket Entry Date	Description
		Administrative Claims Pursuant to Bankruptcy Rule 3012; and In Opposition to Debtors' Motion to Surcharge Its Collateral Pursuant to Section 506(c), with Exhibits 1 to 25
4276	6/18/2019	Demand for Payment of ESL Investments, Inc.
4278	6/18/2019	Request for Payment of Cyrus Capital Partners, LP
4504	6/20/2019	Memorandum of Law in Support of Request of Cyrus Capital Partners, L.P. to Determine the Amount of Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and in Opposition to Debtors' Request to Surcharge Collateral Pursuant to Section 506(c) (unredacted version of Dkt. No. 4313)
4505	6/20/2019	Expert Report of Marti P. Murray in Support of Memorandum of Law in Support of Request of Cyrus Capital Partners, L.P. to Determine the Amount of Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and in Opposition to Debtors' Request to Surcharge Collateral Pursuant to Section 506(c) (unredacted version of Dkt. No. 4314)
4316	6/20/2019	Stipulation and Order By and Among Sears Holdings Corporation and Wilmington Trust, National Association, Cyrus Capital Partners, L.P. and ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC) Concerning the Resolution of Certain Section 507(b) Claims
4372	6/27/2019	Expert Report of David M. Schulte in Support of Supplemental Memorandum of Law on Behalf of ESL Investments, Inc. in Support of its Requests to Determine the Amount of its Second Lien Secured Claims Under Section 506(a) and its Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and in Opposition to the Debtors' Motion to Surcharge its Collateral Pursuant to Section 506(c)
4381	6/27/2019	Debtors' (I) Opposition to Second-Lien Holders' Requests to Determine Amount of Second-Lien Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims and (II) Reply in Support of Debtors' Rule 3012 Motion to Determine the Amount, if any, of 507(b) Claims and to Surcharge Second-Lien Collateral Pursuant to Section 506(c)

Docket No.	Docket Entry Date	Description
4382	6/27/2019	Supplemental Declaration of Brian J. Griffith in Support of the Debtors' (I) Opposition to Second-Lien Holders' Requests to Determine Amount of Second-Lien Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims and (II) Reply in Support of Debtors' Rule 3012 Motion to Determine the Amount, if any, of 507(b) Claims and to Surcharge the Second-Lien Collateral Pursuant to Section 506(c), with Exhibits A-C thereto
4383	6/27/2019	Declaration of Brandon Aebersold, with Exhibits A-C thereto
4439	7/3/2019	Common Reply Memorandum of Law on Behalf of the Second Lien Parties: (a) in Further Support of Their Requests to Determine the Amount of Their Second Lien Secured Claims Under Section 506(a) and Their Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and (b) in Opposition to Debtors' Motion to Surcharge Their Collateral Pursuant to Section 506(c)
4440	7/3/2019	Supplemental Reply Memorandum of Law on Behalf of ESL Investments, Inc. in Further Support of Its Request to Determine the Amount of Its Second Lien Secured Claims Under Section 506(a) and its Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and in Opposition to the Debtors' Motion to Surcharge its Collateral Pursuant to Section 506(c)
4441	7/3/2019	Memorandum of Law / Reply Brief of Cyrus Capital Partners, L.P. in Support of Request to Determine the Amount of Secured Claims under Section 506(a) and Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and in Opposition to Debtors' Request to Surcharge Collateral Pursuant to Section 506(c)
4445	7/6/2019	Supplemental Reply Memorandum of Law in Further Support of the Request of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent for Payment of an Administrative Expense Pursuant to 11 U.S.C. § 503(a) With Priority Over All Other Administrative Expenses Pursuant to 11 U.S.C. § 507(a) and For Allowing of A Secured Claim to the Extent of Remaining Collateral Pursuant to 11 U.S.C. § 506(a) (Corrected)

Docket No.	Docket Entry Date	Description
4538	7/15/2019	The Creditors' Committee's (I) Qualified Joinder to the Debtors' Objection to the Second Lien Parties' Requests to Determine Claims Under Section 506(a) and Section 507(b) and Reply in Support of Debtors' Rule 3012 Motion and (II) Supplemental Objection to the Second Lien Parties' Request to Determine the Claims Under Section 506(a) and Section 507(b)
4563	7/18/2019	Stipulated Facts, with Exhibits A-J thereto
4564	7/18/2019	Motion of Cyrus Capital Partners, L.P., ESL Investments, Inc. and Wilmington Trust, National Association in Limine to Exclude Certain Testimony and Strike Certain Portions of the Declarations by the Debtors' Fact Witness Brian Griffith
4565	7/18/2019	Debtors' Supplemental Brief on Expert Discovery and in Further Support of (I) Opposition to Second-Lien Holders' Requests to Determine Amount of Second-Lien Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims and (II) Reply in Support of the Debtors' Rule 3012 Motion to Determine the Amount, if any, of 507(b) Claims and to Surcharge Second-Lien Collateral Pursuant to Section 506(c)
4566	7/18/2019	Declaration of Katherine R. Lynch in Support of the Motion of Cyrus Capital Partners, L.P., ESL Investments, Inc. and Wilmington Trust, National Association in Limine to Exclude Certain Testimony and Strike Certain Portions of the Declarations by the Debtors' Fact Witness Brian Griffith, with Exhibits A-E thereto
4567	7/18/2019	Second Supplemental Declaration of Brian J. Griffith in Support of the Debtors' (I) Opposition to Second-Lien Holders' Requests to Determine Amount of Second-Lien Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims and (II) Reply in Support of Debtors' Rule 3012 Motion to Determine the Amount, if any, of 507(b) Claims and to Surcharge the Second-Lien Collateral Pursuant to Section 506(c), with Exhibits A-I thereto
4568	7/18/2019	Debtors' Motion to Strike Second-Lien Holders' Experts in Connection with July 23, 2019, Hearing on Rule 507(b) Determination
4569	7/18/2019	Declaration of David M. Schulte in Support of ESL's Requests to Determine the Amount of Its Second Lien Secured Claims

Docket No.	Docket Entry Date	Description
		Under Section 506(a) and Its Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and ESL's Joinder to the Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors' Continued Use of Collateral, Including Case Collateral; and in Opposition to the Debtors' Motion to Surcharge ESL's Collateral Pursuant to Section 506(c), dated July 18, 2019, with Exhibits A-D thereto
4570	7/18/2019	Common Supplemental Brief of the Second Lien Parties Addressing Discovery: (A) In Connection with Their Requests to Determine the Amount of Their Second Lien Secured Claims Under Section 506(a) and Their Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012; and (B) In Opposition to Debtors' Motion to Surcharge Their Collateral Pursuant to Section 506(c)
4571	7/18/2019	Declaration of Marti P. Murray in Support of Cyrus Capital Partners, L.P.'s Request to Determine the Amount of Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and In Opposition to Debtors' Request to Surcharge Collateral Pursuant to Section 506(c), with Exhibit A thereto
4573	7/18/2019	Declaration of William Henrich (I) in Support of the Request of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent For Payment of An Administrative Expense Pursuant to 11 U.S.C. § 503(a) With Priority Over All Other Administrative Expenses Pursuant to 11 U.S.C. § 507(b) and For Allowance of a Secured Claim to the Extent of Remaining Collateral Pursuant to 11 U.S.C. § 506(a) and (II) In Opposition to the Debtors' Motion Pursuant to 11 U.S.C. § 506(c), with Exhibits A-L thereto
4586	7/19/2019	Request of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent for Payment of an Administrative Expense Pursuant to 11 U.S.C. § 503(a) With Priority Over All Other Administrative Expenses Pursuant to 11 U.S.C. § 507(b) and For Allowance of a Secured Claim to the Extent of Remaining Collateral Pursuant to 11 U.S.C. § 506(a), with Exhibits A-J thereto (unredacted version of Dkt. No. 4279)
4587	7/19/2019	Supplemental Memorandum of Law of Wilmington Trust, National Association, as Indenture Trustee and Collateral

Docket No.	Docket Entry Date	Description
		Agent, (I) In Support of Motion Pursuant to Bankruptcy Rule 3012 for Determination of Amount of Secured Claim Pursuant to 11 U.S.C. § 506(a) and Amount of Claim Entitled to Priority Pursuant to 11 U.S.C. § 507(b) and (II) In Opposition to the Debtors Motion Pursuant to 11 U.S.C. § 506(c) (unredacted version of Dkt. No. 4280)
4598	7/22/2019	Notice of Amended Agenda of Matters Scheduled for Hearing on July 23, 2019 at 10:00 a.m.
4740	8/5/2019	Order Determining the Amount of Second-Lien Holders' Section 507(B) Administrative Claims Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure
4832	8/14/2019	Notice of Appeal (ESL)
4839	8/14/2019	Notice of Appeal (Wilmington Trust)
4845	8/14/2019	Notice of Appeal (Cyrus)
4928	8/21/2019	Transcript of Hearing held on July 23, 2019
5007	8/28/2019	Transcript of Hearing held on July 31, 2019
N/A	N/A	Copy of Bankruptcy Court Docket Report through August 14, 2019

JOINT EXHIBITS ("JX") FROM THE JULY 23, 2019 AND JULY 31, 2019 HEARINGS

JX No.	Document
1.	GOB Inventory Recovery Rates
2.	External Analysis
3.	Borrowing Base Certificate
4.	Tiger – Inventory Appraisal
5.	GOB Store Performance (Post-Ch. 11 Bankruptcy Filing)
6.	Second Lien Security Agreement

JX No.	Document
7.	First Lien Security Agreement
8.	ESL presentation entitled “Project Transform – ESL Bid Presentation”
9.	ESL presentation entitled “Project Transform – Sources and Uses”
10.	Stock Ledger Detail Inquiry
11.	ESL Bid Analysis – Project Blue
12.	Project Blue – Actuals from Week ended January 26 through February 9
13.	Project Blue – Rolling Cash Flow Budget (Week 15)
14.	Wind Down Recoveries
15.	Project Blue – Rolling 13-Week Cash Flow Forecast (Week 6)
16.	DRAFT – Minutes of a Meeting of the Restructuring Committee
17.	Project Blue – Liquidation Bids Review
18.	Correspondence from Transform to Lazard
19.	Correspondence from Transform to Lazard
20.	Tiger – Inventory Appraisal
21.	Transform Transaction – Weekly Tracking
22.	Correspondence from Sears to Transform
23.	Expert Worksheet – Draft
24.	Stipulation and Order Concerning the Resolution of Certain Section 507(b) Claims [Dkt. No. 4316, filed June 21, 2019]
25.	ESL January 7 Letter – Exhibit C to Aebersold Decl.
26.	ESL November 2 Letter – Exhibit B to Aebersold Decl.
27.	ESL October 31 Letter – Exhibit A to Aebersold Decl.
28.	Week 36 Borrowing Base Certificate – Exhibit A to Griffith Suppl. Decl.
29.	Stipulation and Order Concerning Debtors’ Continuing Use of Cash Collateral [Dkt. No. 4287 filed June 19, 2019]

JX No.	Document
30.	Second Amended Joint Chapter 11 Plan [Dkt. No. 4476 filed July 9, 2019]
31.	Response of the Restructuring Subcommittee [Dkt. No. 4039 filed May 28, 2019]
32.	Disclosure Statement Motion [Dkt. No. 3277 filed April 17, 2019]
33.	Debtors' Objection to Motion of Wilmington Trust, National Association, as Indenture Trustee and collateral Agent to Prohibit or Condition Debtors' Continued Use of Collateral, including Cash Collateral [Dkt. No. 3198 filed April 15, 2019]
34.	Order (I) Approving the Asset Purchase Agreement among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection therewith and (IV) Granting Related Relief [Dkt. No. 2507 filed February 8, 2019]
35.	ESL's Omnibus Response in Support of the Going Concern Sale Transaction [Dkt. No. 2352 filed February 1, 2019]
36.	January 14 Proposed Final Ask – Exhibit D to Transier Decl.
37.	Global Sale Process: Bid Qualification Overview – Exhibit C to Transier Decl.
38.	Business plans – Composite B to Transier Decl.
39.	Transier Resume – Exhibit A
40.	Declaration of William L. Transier
41.	Board Resolution – Exhibit A to Aebersold Decl.
42.	Declaration of Brandon Aebersold [Aebersold Sale Decl.]
43.	Debtors' Omnibus Reply in Support of the Going Concern Sale Transaction [Dkt. No. 2328 filed February 1, 2019]
44.	Declaration of Alan J. Carr [Dkt. No. 2321 filed February 1, 2019]
45.	Final DIP Order [Dkt. No. 955 filed November 30, 2018]
46.	DIP Intercreditor Agreement [Dkt. No. 892 filed November 27, 2018]
47.	Global Bidding Procedures Process Letter [Dkt. No. 862 filed November 21, 2018]

JX No.	Document
48.	Bidding Procedures [Dkt. No. 816 filed November 19, 2018]
49.	Critical Vendors Order [Dkt. No. 798 filed November 16, 2018]
50.	Utilities Order [Dkt. No. 431 filed November 2, 2018]
51.	Brandon Aebersold – First Day Declaration [Dkt. No. 9 filed October 15, 2018]
52.	DIP Motion [Dkt. No. 7 filed October 15, 2018]
53.	Hearing Transcript
54.	Hearing Transcript
55.	Auction Transcript
56.	Hearing Transcript [Dkt. No. 2469 filed January 9, 2019, entered February 7, 2019]
57.	First Interim Application of Houlihan Lokey Capital, Inc. [Dkt. No. 3194 filed April 15, 2019]
58.	First Interim Application of FTI Consulting, Inc. [Dkt. No. 3195 filed April 15, 2019]
59.	First Interim Fee Application of Evercore Group L.L.C. [Dkt. No. 3204 filed April 15, 2019]
60.	First Interim Fee Application of Paul, Weiss, Rifkind, Wharton & Garrison LLP [Dkt. No. 3207 filed April 15, 2019]
61.	First Interim Fee Application of Lazard Freres & Co, LLC [Dkt. No. 3217 filed April 15, 2019]
62.	First Application of Weil, Gotshal & Manges LLP [Dkt. No. 3224 filed April 15, 2019]
63.	Second Amended and Restated Intercreditor Agreement
64.	Citi – Cash Collateral Agreement
65.	Vendor List
66.	Forecast List
67.	Management Forecast
68.	ESL Investments, Inc. and Edward S. Lampert Statement on Chapter 11 Reorganization Filing by Sears Holdings Corporation – press release

JX No.	Document
69.	Correspondence from Sean O'Neal to Ray Schrock
70.	Exhibit B – Summary of Agreed Terms -- to Project Transform Commitment Letter, dated January 17, 2019
71.	Exhibit A – Description of Transaction – to Project Transform Commitment Letter, dated January 17, 2019
72.	Hearing Transcript
73.	General Ledger
74.	Borrowing Base Certificate
75.	Borrowing Base Certificate Page 1 Signed
76.	Second Lien Parties' First Consolidated Request for Production of Documents Directed to the Debtors
77.	Estimated Script Asset Value
78.	Declaration of Mohsin Y. Meghji in Support of Debtors' Motion for Authority to (A) Obtain Postpetition Financing, (b) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties and (D) Schedule Second Interim Hearing and Final Hearing [Dkt. No. 10 filed October 15, 2018]
79.	Declaration of Mohsin Y. Meghji
80.	Motion of Debtors for Authorization to (I) Continue, Maintain, and Renew their Insurance Policies and Workers' Compensation Programs; (II) Honor all Obligations with Respect thereto; and (III) Modify the Automatic stay with Respect to The Workers' Compensation Programs [Dkt. No. 17 filed October 15, 2018]
81.	Sears Holdings Corporation, Annual Report (Form 10-K)
82.	Wind Down Recoveries
83.	ESL Bid vs. Liquidation Comparison
84.	Project Transform - Creditor Recovery Side by Side Analysis
85.	Cash Collateral – Weekly Budget Variance Report
86.	Hearing Transcript [Dkt. No. 2700 filed February 5, 2019, entered February 27, 2019]
87.	Interim Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative

JX No.	Document
	Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief [Dkt. No. 101 filed October 16, 2018]
88.	Final Junior DIP Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Grant Secured Priming Liens and Superpriority Administrative Expense Claims; (II) Modifying the Automatic Stay; and (III) Granting Related Relief [Dkt. No. 1436 filed December 28, 2018]
89.	Notice of Successful Bidder and Sale Hearing [Dkt. No. 1730 filed January 18, 2019]
90.	Declaration of Kunal S. Kamlani in Support of ESL's Omnibus Response in Support of the Going Concern Sale Transaction [Dkt. No. 2356 filed February 1, 2019]
91.	Amendment to the Asset Purchase Agreement [Dkt. No. 2456 filed February 7, 2019]
92.	Hearing Transcript [Dkt. No. 2869, filed February 8, 2019, entered March 18, 2019]
93.	Creditor Recovery Considerations
94.	Project Blue – Rolling Cash Flow Budget (Week 16)
95.	Kamlani Deposition Transcript
96.	Aebersold Deposition Transcript
97.	Sears Holdings Corp., PWP Requests 3-5 Spreadsheet
98.	Excel Spreadsheet of LC Draws
99.	Excel Spreadsheet of LC Summary
100.	Project Blue — Liquidation Sale Process Update
101.	Abacus Advisors, Indication of Interest Letter to Mohsin Y. Meghji and Colin M. Adams with attached Sears Holdings Corporation Total Company Summary of Total Estimated Net Recovery Values on Retail Stores GOB Inventory, Draft – Subject to Further Refinement
102.	Abacus Advisors, Summary of Total Estimated Net Recovery Values on Retail Store GOB Inventory, Draft – Subject to Further Refinement
103.	Tiger Inventory Appraisal, Prepared for Bank of America Merrill Lynch

JX No.	Document
104.	Tiger Inventory Appraisal, Prepared for Bank of America Merrill Lynch
105.	Illustrative Recovery Considerations
106.	Minutes of the Meeting of the Restructuring Committee of the Board of Directors of Sears Holdings Corp.
107.	Minutes of the Meeting of the Restructuring Committee
108.	Advisory Bid Comparison
109.	Declaration of Robert A. Riecker [Dkt. No. 3 filed October 15, 2018]
110.	Declaration of Robert A. Riecker in Support of Debtors' Omnibus Reply [Dkt. No. 866 filed November 23, 2018]
111.	Declaration of Sunny Singh in Support of the Going Concern Sale Transaction [Dkt. No. 2344 filed February 1, 2019]
112.	Disclosure Statement for Second Amended Joint Chapter 11 Plan [Dkt. No. 4042 filed May 28, 2019]
113.	Debtors' Monthly Operating Reports for April 7–May 4, 2019 [Dkt. No. 3231 filed June 14, 2019]
114.	Sears Holdings Corporation, Annual Report (Form 10-Q) for the period ending Aug. 4, 2018
115.	Second Lien Credit Agreement
116.	Second Amendment to Letter of Credit and Reimbursement Agreement (LC Facility Agreement)
117.	Mohsin Meghji Deposition Transcript
118.	Indenture dated as of October 12, 2010
119.	First Supplemental Indenture dated as of April 5, 2011
120.	Second Supplemental Indenture dated as of July 7, 2015
121.	Third Supplemental Indenture dated as of September 19, 2016
122.	Fourth Supplemental Indenture dated as of January 9, 2018
123.	Fifth Supplemental Indenture dated as of March 20, 2018
124.	Instrument of Resignation, Appointment, and Acceptance dated as of June 25, 2014

JX No.	Document
125.	Indenture dated as of March 20, 2018 (6 ^{5/8} % Senior Secured Convertible PIK Toggle Notes due 2019)
126.	Amended and Restated Security Agreement dated as of March 20, 2018
127.	Chart of UCC-1 financing statements and UCC-3 continuation statements
128.	Order Authorizing Debtors to (I) Maintain and Administer Prepetition Customer Programs, Promotions, and Practices, and (II) Pay and Honor Related Prepetition Obligations [Dkt. No. 135 filed October 17, 2018]
129.	Proof of Claim of JPP, LLC, executed December 24, 2018 and filed with Prime Clerk LLC on January 4, 2019
130.	Debtors' Slides Presented at Sale Hearing on February 7, 2019: Consideration Provided by ESL in the Sale Transaction, pages 13-14
131.	Debtors' Slides Presented at Sale Hearing on February 7, 2019: The Benefits of the Sale Transaction Outweigh an Orderly Winddown, pages 15-16
132.	Proof of Claim of Wilmington Trust, as Indenture Trustee and Collateral Agent for the Second Lien Notes executed February 20, 2019 and electronically filed on the Bankruptcy Court's Claims Register on February 20, 2019
133.	Proof of Claim of Computershare Trust Company, N.A., as Indenture Trustee for the Second Lien PIK Notes executed April 1, 2019 and filed with Prime Clerk LLC on April 4, 2019
134.	Project Blue - Wind Down Budget January 10, 2019
135.	Project Blue Actuals from Weeks ended January 26 through February 9 May 13, 2019
136.	Sears Holdings Admin Solvency Tracker and Budget Update July 10, 2019
137.	Sears Holdings Corporation and Affiliates - Schedules of Assets and Liabilities [Document not attached, pursuant to Local Rule 8009-1(b).]

DEPOSITION TRANSCRIPTS

Document
Transcript of the Deposition of David M. Schulte, taken on June 29, 2019, with the Second Lien-Holders' designations and the Debtors' counter-designations
Transcript of the Deposition of William Henrich, taken on July 2, 2019, with the Second-Lien Holders' designations and the Debtors' counter-designations

Transcript of the Deposition of Marti Murray, taken on July 3, 2019, with the Second-Lien Holders' designations and the Debtors' counter-designations

Transcript of the Deposition of Brian J. Griffith, taken on July 10, 2019, with the Debtors' designations and the Second-Lien Holders' counter-designations

Transcript of the Deposition of Brandon Aebersold, taken on July 10, 2019, with the Debtors' designations and the Second-Lien Holders' counter-designations

Dated: New York, New York
August 28, 2019

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: /s/ Andrew Weaver
Thomas J. Moloney
Sean A. O'Neal
Andrew Weaver

One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999

Counsel for ESL